

By: Representatives Miles, Rotenberry

To: Transportation

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 844

1 AN ACT TO CREATE THE MISSISSIPPI VEHICLE PROTECTION PRODUCT
2 ACT; TO DEFINE CERTAIN TERMS FOR THE PURPOSE OF THIS ACT; TO
3 PROVIDE THAT VEHICLE PROTECTION DEVICE, SYSTEM OR SERVICE THAT IS
4 SOLD IN THIS STATE WITH A WARRANTY MUST MEET CERTAIN REQUIREMENTS
5 PRESCRIBED BY THIS ACT; TO PROVIDE THAT VEHICLE PROTECTION
6 WARRANTIES ARE NOT CONTRACTS OF INSURANCE AND ARE EXEMPT FROM THE
7 LAW REGULATING INSURANCE; TO REQUIRE WARRANTORS OF VEHICLE
8 PROTECTION PRODUCTS TO REGISTER WITH THE ATTORNEY GENERAL; TO
9 REQUIRE CERTAIN FINANCIAL RESPONSIBILITY OR WARRANTY
10 REIMBURSEMENTS TO BE MAINTAINED BY A WARRANTOR; TO REQUIRE
11 WARRANTORS TO DISCLOSE CERTAIN INFORMATION TO THE WARRANTY HOLDER;
12 TO PROHIBIT CERTAIN ACTS OF WARRANTORS; TO REQUIRE WARRANTORS TO
13 RETAIN AN ACCURATE RECORD OF ACCOUNTS, BOOKS AND RECORDS
14 CONCERNING TRANSACTIONS REGULATED BY THIS ACT; TO AUTHORIZE THE
15 ATTORNEY GENERAL TO ESTABLISH CERTAIN ADMINISTRATIVE SANCTIONS AND
16 IMPOSE PENALTIES FOR VIOLATIONS OF THIS ACT; TO AUTHORIZE THE
17 ATTORNEY GENERAL TO ADOPT RULES AND REGULATIONS RELATING TO THE
18 IMPLEMENTATION OF THIS ACT; AND FOR RELATED PURPOSES.

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

20 **SECTION 1.** This act shall be known and may be cited as the
21 "Mississippi Vehicle Protection Product Act."

22 **SECTION 2.** As used in this section:

23 (a) "Administrator" means a third party other than the
24 warrantor who is designated by the warrantor to be responsible for
25 the administration of vehicle protection product warranties.

26 (b) "Attorney General" means the Attorney General of
27 the State of Mississippi.

28 (c) "Incidental costs" means expenses specified in the
29 warranty incurred by the warranty holder related to the failure of
30 the vehicle protection product to perform as provided in the
31 warranty. Incidental costs may include, without limitation,
32 insurance policy deductibles, rental vehicle charges, the
33 difference between the actual value of the stolen vehicle at

34 the time of theft and the cost of a replacement vehicle, sales
35 taxes, registration fees, transaction fees and mechanical
36 inspection fees.

37 (d) "Vehicle protection product" means a vehicle
38 protection device, system or service that:

39 (i) Is installed on or applied to a vehicle;

40 (ii) Is designed to prevent loss or damage to a
41 vehicle from a specific cause; and

42 (iii) Includes a written warranty.

43 (e) The term "vehicle protection device, system or
44 service" shall include, without limitation, alarm systems, body
45 part marking products, steering locks, window etch products, pedal
46 and ignition locks, fuel and ignition kill switches and
47 electronic, radio and satellite tracking devices.

48 (f) "Vehicle protection product warranty" or "warranty"
49 means a written agreement by a warrantor that provides that if the
50 vehicle protection product fails to prevent loss or damage to a
51 vehicle from a specific cause, then the warranty holder shall be
52 paid specified incidental costs by the warrantor as a result of
53 the failure of the vehicle protection product to perform pursuant
54 to the terms of the warranty.

55 (g) "Vehicle protection product warrantor" or
56 "warrantor" means a person who is contractually obligated to the
57 warranty holder under the terms of the vehicle protection product
58 warranty agreement. "Warrantor" does not include an authorized
59 insurer.

60 (h) "Warranty holder" means the person who purchases a
61 vehicle protection product or who is a permitted transferee.

62 (i) "Warranty reimbursement insurance policy" means a
63 policy of insurance that is issued to the vehicle protection
64 product warrantor to provide reimbursement to the warrantor or to
65 pay on behalf of the warrantor all covered contractual obligations
66 incurred by the warrantor under the terms and conditions of the

67 insured vehicle protection product warranties sold by the
68 warrantor.

69 **SECTION 3.** (1) No vehicle protection product may be sold or
70 offered for sale in this state unless the seller, warrantor and
71 administrator, if any, comply with the provisions of this act.

72 (2) A vehicle protection product warranty provided or sold
73 in compliance with this act is not a contract of insurance.

74 (3) Warranties, indemnity agreements and guarantees that are
75 not provided as a part of a vehicle protection product are not
76 subject to the provisions of this act.

77 **SECTION 4.** (1) A person may not operate as a warrantor or
78 represent to the public that the person is a warrantor unless the
79 person is registered with the Attorney General on a form
80 prescribed by the Attorney General.

81 (2) Warrantor registration records shall be filed annually
82 and shall be updated by the warrantor within thirty (30) days of
83 any change. The registration records shall contain the following
84 information:

85 (a) The warrantor's name, any other names under which
86 the warrantor does business in the state, principal office address
87 and telephone number;

88 (b) The names of the warrantor's executive officer or
89 officers directly responsible for the warrantor's vehicle
90 protection product business;

91 (c) The name, address and telephone number of any
92 administrators designated by the warrantor to be responsible for
93 the administration of vehicle protection product warranties in
94 this state;

95 (d) A copy of the warranty reimbursement insurance
96 policy or policies or other financial information required by
97 Section 6 below;

98 (e) A copy of each warranty the warrantor proposes to
99 use in this state; and

100 (f) A statement indicating under which provision of
101 Section 5 of this act that the warrantor qualifies to do business
102 in this state as a warrantor.

103 (3) The Attorney General may charge each registrant a
104 reasonable fee to offset the cost of processing the registration
105 and maintaining the records. Such fee shall be set by the
106 Attorney General in an amount not to exceed the amount necessary
107 to defray the Attorney General's expenses in administering this
108 act.

109 (4) If a registrant fails to register by the renewal
110 deadline, the Attorney General shall give the registrant written
111 notice of the failure and the registrant will have thirty (30)
112 days to complete the renewal of the registration before the
113 registration is revoked. Revocation for failure to renew a
114 registration does not require any additional notice or a hearing.

115 (5) An administrator or person who sells or solicits a sale
116 of a vehicle protection product but who is not a warrantor shall
117 not be required to register as a warrantor or be licensed under
118 the insurance laws of this state to sell vehicle protection
119 products.

120 **SECTION 5.** (1) No vehicle protection product shall be sold
121 or offered for sale in this state unless the vehicle protection
122 product warrantor can prove financial solvency as provided under
123 subsection (2) of this section or is insured under a warranty
124 insurance policy meeting the following conditions in order to
125 ensure adequate performance under the warranty:

126 (a) The warranty reimbursement insurance policy is
127 issued by an insurer authorized to do business in this state and
128 provides that the insurer will pay to, or on behalf of, the
129 warrantor one hundred percent (100%) of all sums that the
130 warrantor is legally obligated to pay according to the warrantor's
131 contractual obligations under the warrantor's vehicle protection
132 product warranty;

133 (b) A true and correct copy of the warranty
134 reimbursement insurance policy has been filed with the Attorney
135 General by the warrantor; and

136 (c) The policy contains the provisions required by
137 Section 6 of this act.

138 (2) As an alternative to warranty reimbursement insurance
139 under subsection (1) of this section, the vehicles protection
140 warrantor or its parent company must:

141 (a) Maintain a net worth of stockholders' equity of
142 Fifty Million Dollars (\$50,000,000.00); and

143 (b) Provide the Attorney General with a copy of the
144 warrantor's or the warrantor's parent company's most recent Form
145 10-K or Form 20-F filed with the Securities Exchange Commission
146 within the last calendar year or, if the warrantor does not file
147 with the Securities Exchange Commission, a copy of the warrantor's
148 or the warrantor's parent company's audited financial statements
149 that shows a net worth of the warrantor or its parent company if
150 at least Fifty Million Dollars (\$50,000,000.00). If the
151 warrantor's parent company's Form 10-K, Form 20-F or audited
152 financial statements are filed to meet the warrantor's financial
153 stability requirement, then the parent company shall agree to
154 guarantee the obligations of the warrantor relating to the
155 warranties issued by the warrantor in this state. The audited
156 financial statements filed pursuant to this subsection shall be
157 exempt from public disclosure under the Mississippi Public Records
158 Act of 1983.

159 **SECTION 6.** No warranty reimbursement insurance policy shall
160 be issued, sold or offered for sale in this state unless the
161 policy meets the following conditions:

162 (a) The policy states that the issuer of the policy
163 will reimburse or pay on behalf of the vehicle protection product
164 warrantor all covered sums which the warrantor is legally
165 obligated to pay, or will provide all service that the warrantor

166 is legally obligated to perform according to the warrantor's
167 contractual obligations under the provisions of the insured
168 warranties sold by the warrantor;

169 (b) The policy states that in the event that payment
170 due under the terms of the warranty is not provided by the
171 warrantor within sixty (60) days after proof of loss has been
172 filed according to the terms of the warranty by the warranty
173 holder, the warranty holder may file directly with the warranty
174 reimbursement insurance company for reimbursement;

175 (c) The policy provides that a warranty reimbursement
176 insurance company that insures a warranty shall be deemed to have
177 received payment of the premium if the warranty holder paid for
178 the vehicle protection product and the insurer's liability under
179 the policy shall not be reduced or relieved by a failure of the
180 warrantor, for any reason, to report the issuance of a warranty to
181 the insurer; and

182 (d) The policy has the following provisions regarding
183 cancellation of the policy:

184 (i) The issuer of a reimbursement insurance policy
185 shall not cancel such policy until a notice of cancellation in
186 writing has been mailed or delivered to the Attorney General and
187 each insured warrantor;

188 (ii) The cancellation of a reimbursement insurance
189 policy shall not reduce the issuer's responsibility for vehicle
190 protection products sold prior to the date of cancellation; and

191 (iii) In the event an insurer cancels a policy
192 that a warrantor has filed with the Attorney General, the
193 warrantor shall do either of the following:

194 1. File a copy of a new policy with the
195 Attorney General, before the termination of the prior policy,
196 provided that there is no lapse in coverage following the
197 termination of the prior policy; or

198 2. Discontinue acting as a warrantor as of
199 the termination date of the policy until a new policy becomes
200 effective and is accepted by the Attorney General.

201 SECTION 7. (1) Every vehicle protection product warranty
202 shall be written in clear, understandable language and shall be
203 printed or typed in an easy-to-read point size and font and shall
204 not be sold or offered for sale in the state unless the warranty:

205 (a) Contains a disclosure that reads substantially as
206 follows: "This agreement is a product warranty and is not
207 insurance.";

208 (b) Identifies the warrantor, the administrator (if
209 any), the seller and the warranty holder;

210 (c) Sets forth the procedure for making a claim,
211 including a telephone number;

212 (d) Sets forth the total purchase price and the terms
213 under which it is to be paid, however, the purchase price is not
214 required to be preprinted on the vehicle protection product
215 warranty and may be negotiated with the consumer at the time of
216 sale;

217 (e) Sets forth any terms, restrictions or conditions
218 governing transferability of the warranty, if any;

219 (f) Conspicuously sets forth all of the obligations and
220 duties of the warranty holder such as the duty to protect against
221 any further damage to the vehicle, the obligation to notify the
222 warrantor in advance of any repair or other similar requirements,
223 if any;

224 (g) Conspicuously states the existence of a deductible
225 amount, if any;

226 (h) Specifies the payments or performance to be
227 provided under the warranty including payments for incidental
228 costs, the manner of calculation or determination of payments or
229 performance and any limitations, exceptions or exclusions;

230 (i) Sets forth the conditions on which substitution
231 will be allowed;

232 (j) Conspicuously states that the obligations of the
233 warrantor to the warranty holder are insured under a warranty
234 reimbursement insurance policy;

235 (k) Conspicuously states that, in the event a warranty
236 holder must make a claim against a party other than the warranty
237 reimbursement insurance policy issuer, the warranty holder is
238 entitled to make a direct claim against the insurer upon the
239 failure of the warrantor to pay any claim or meet any obligation
240 under the terms of the warranty within sixty (60) days after proof
241 of loss has been filed with the warrantor; and

242 (l) Conspicuously states the name and address of the
243 issuer of the warranty reimbursement insurance policy. This
244 information need not be preprinted on the warranty form but may be
245 stamped on the warranty.

246 (2) At the time of sale, the seller or warrantor shall
247 provide to the purchaser:

248 (a) A copy of the vehicle protection product warranty;
249 or

250 (b) A receipt or other written evidence of the purchase
251 of the vehicle protection product and a copy of the warranty
252 within thirty (30) days of the date of purchase.

253 **SECTION 8.** (1) No vehicle protection product may be sold or
254 offered for sale in this state unless the vehicle protection
255 product warranty clearly states the terms and conditions governing
256 the cancellation of the sale and warranty, if any.

257 (2) The warrantor may only cancel the warranty if the
258 warranty holder does any of the following:

259 (a) Fails to pay for the vehicle protection product;

260 (b) Makes a material misrepresentation to the seller or
261 warrantor;

262 (c) Commits fraud; or

263 (d) Substantially breaches the warranty holder's duties
264 under the warranty.

265 (3) A warrantor canceling a warranty shall mail written
266 notice of cancellation to the warranty holder at the last address
267 of the warranty holder in the warrantor's records at least thirty
268 (30) days prior to the effective date of the cancellation. The
269 notice shall state the effective date of the cancellation and the
270 reason for the cancellation.

271 **SECTION 9.** (1) Unless licensed as an insurance company, a
272 vehicle protection product warrantor shall not use in its name,
273 contracts or literature the words "insurance," "casualty,"
274 "surety," "mutual" or any other word that is descriptive of the
275 insurance, casualty or surety business, or that is deceptively
276 similar to the name or description of any insurance or surety
277 corporation or any other vehicle protection product warrantor. A
278 warrantor may use the term "guaranty" or a similar word in the
279 warrantor's name.

280 (2) A vehicle protection product warrantor shall not make,
281 permit or cause any false or misleading statements, either oral or
282 written, in connection with the sale, offer to sell or
283 advertisement of a vehicle protection product.

284 (3) A vehicle protection product warrantor shall not permit
285 or cause the omission of any material statement in connection with
286 the sale, offer to sell or advertisement of a vehicle protection
287 product.

288 (4) A vehicle protection product warrantor shall not make,
289 permit or cause any false or misleading statements, either oral or
290 written, about the performance required or payments that may be
291 available under the vehicle protection product warranty.

292 (5) A vehicle protection product warrantor shall not make,
293 permit or cause any statement or practice that has the effect of
294 creating or maintaining a fraud.

295 (6) A vehicle protection product seller or warrantor may not

296 require as a condition of sale or financing that a retail
297 purchaser of a motor vehicle purchase a vehicle protection product
298 that is not installed on the motor vehicle at the time of sale.

299 **SECTION 10.** (1) All vehicle protection product warrantors
300 shall keep accurate accounts, books and records concerning
301 transactions regulated under this chapter.

302 (2) A vehicle protection product warrantor's accounts, books
303 and records shall include:

304 (a) Copies of all vehicle protection product
305 warranties;

306 (b) The name and address of each warranty holder; and

307 (c) The dates, amounts and descriptions of all
308 receipts, claims and expenditures.

309 (3) A vehicle protection product warrantor shall retain all
310 required accounts, books and records pertaining to each warranty
311 holder for at least two (2) years after the specified period of
312 coverage has expired. A warrantor discontinuing business in the
313 state shall maintain its records until it furnishes the Attorney
314 General satisfactory proof that it has discharged all obligations
315 to warranty holders in this state.

316 (4) Vehicle protection product warrantors shall make all
317 accounts, books and records concerning transactions regulated
318 under this act available to the Attorney General for the purpose
319 of examination.

320 **SECTION 11.** (1) (a) The Attorney General may conduct
321 examinations of warrantors, administrators or other persons to
322 enforce this act and protect warranty holders in this state. Upon
323 request of the Attorney General, a warrantor shall make available
324 to the Attorney General all accounts, books and records concerning
325 vehicle protection products sold by the warrantor that are
326 necessary to enable the Attorney General to reasonably determine
327 compliance or noncompliance with this act.

328 (b) Any person or entity examined shall pay any and all

329 appropriate and reasonable costs incurred by the Attorney General
330 during the examination, including, but not limited to, the
331 compensation of such experts, actuaries, examiners or other
332 persons as may be contracted for by the Attorney General or the
333 Attorney General's designated appointee for the purpose of
334 assisting in the examination. Such compensation shall be fixed at
335 a reasonable amount commensurate with usual compensation for
336 like services and shall be contracted for in accordance with
337 applicable state contracting procedures, if applicable.

338 (2) The Attorney General may take action that is necessary
339 or appropriate to enforce the provisions of this act and the
340 Attorney General's rules and orders and to protect warranty
341 holders in this state. If a person or entity violates this act
342 and the Attorney General reasonably believes such violation
343 threatens to cause irreparable loss or injury to the property or
344 business of any person or company located in this state, the
345 Attorney General may:

346 (a) Issue an order directed to that warrantor to cease
347 and desist from engaging in further acts, practices or
348 transactions that are causing the conduct;

349 (b) Issue an order prohibiting that warrantor from
350 selling or offering for sale vehicle protection products in
351 violation of this act;

352 (c) Issue an order imposing a civil penalty on that
353 warrantor; or

354 (d) Issue any combination of paragraphs (a) through (c)
355 of this subsection, as applicable.

356 (3) The Attorney General may bring an action in any court of
357 competent jurisdiction for an injunction or other appropriate
358 relief to enjoin threatened or existing violations of this act or
359 of the Attorney General's orders or rules. An action filed under
360 this section also may seek restitution on behalf of persons

361 aggrieved by a violation of this act or orders or rule of the
362 Attorney General.

363 (4) A person or entity who is found to have violated this
364 act or orders or rules of the Attorney General may be ordered to
365 pay to the Attorney General a civil penalty in an amount,
366 determined by the Attorney General, of not more than Five Hundred
367 Dollars (\$500.00) per violation and not more than Ten Thousand
368 Dollars (\$10,000.00) in the aggregate for all violations of a
369 similar nature. For purposes of this section, violations shall be
370 of a similar nature if the violation consists of the same or
371 similar course of conduct, action or practice, irrespective of the
372 number of times the conduct, action or practice is determined to
373 be a violation of this act.

374 **SECTION 12.** (1) Any warrantor doing business in this state
375 in accordance with this act shall be deemed to have appointed the
376 Attorney General its true and lawful attorney upon whom may be
377 served all lawful process in any action or proceeding against it.

378 (2) Any warrantor doing business in this state, operating
379 without the authority provided by this act, shall be deemed to
380 have appointed the Secretary of State to be its true and lawful
381 attorney upon whom may be served all lawful process in any action
382 or proceeding against it.

383 **SECTION 13.** The Attorney General may adopt rules and
384 regulations to establish procedures for implementing the
385 provisions of this act as are necessary. Such rules and
386 regulations shall include disclosures for the benefit of the
387 warranty holder, record keeping requirements, registration fees,
388 penalties and procedures for public complaints. Such rules and
389 regulations shall also include the conditions under which surplus
390 lines insurers may be rejected for the purpose of underwriting
391 vehicle protection product warranty agreements.

392 **SECTION 14.** This act applies to all vehicle protection
393 products sold or offered for sale on or after July 1, 2007. The

394 failure of any person to comply with this act before July 1, 2007,
395 shall not be admissible in any court proceeding, administrative
396 proceeding, arbitration or alternative dispute resolution
397 proceeding and may not otherwise be used to prove that the action
398 of any person or the affected vehicle protection product was
399 unlawful or otherwise improper.

400 **SECTION 15.** This act shall take effect and be in force from
401 and after July 1, 2007.